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UMG RECORDINGS, INC.; ARISTA RECORDS  
LLC; ELEKTRA ENTERTAINMENT GROUP  
INC.; CAPITOL RECORDS, INC.; LAFACE  
RECORDS LLC; SONY BMG MUSIC  
ENTERTAINMENT; and MOTOWN RECORD  
COMPANY, L.P.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

\*E-Filed 3/19/08\*

UMG RECORDINGS, INC., a Delaware  
corporation; ARISTA RECORDS LLC, a  
Delaware limited liability company; ELEKTRA  
ENTERTAINMENT GROUP INC., a Delaware  
corporation; CAPITOL RECORDS, INC., a  
Delaware corporation; LAFACE RECORDS  
LLC, a Delaware limited liability company;  
SONY BMG MUSIC ENTERTAINMENT, a  
Delaware general partnership; and MOTOWN  
RECORD COMPANY, L.P., a California  
limited partnership,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO. 5:07-CV-06033-RMW

**Honorable Ronald M. Whyte**

***EX PARTE APPLICATION TO EXTEND  
TIME TO EFFECTUATE SERVICE AND  
CONTINUE CASE MANAGEMENT  
CONFERENCE AND [] ORDER***

1 Pursuant to Rules 4(m) and 6(b)(1)(A) of the Federal Rules of Civil Procedure, Plaintiffs  
2 respectfully request an additional 90 days – until June 26, 2008 – to serve Defendant with the  
3 Summons and Complaint. Plaintiffs further request that the Court continue the case management  
4 conference currently set for March 28, 2008, at 10:30 a.m., to July 25, 2008. As further explained  
5 below, Plaintiffs believe they have determined the identity of the Doe defendant in this case, and the  
6 parties are engaged in settlement negotiations. If negotiations fail, Plaintiffs intend to file a First  
7 Amended Complaint naming Defendant personally, and then proceed to serve process upon her:

8 1. The current deadline for service of process is March 28, 2008. The initial case  
9 management conference is set for March 28, 2008. No previous continuances or extensions have  
10 been requested or granted in this case.

11 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant John  
12 Doe on November 29, 2007. Plaintiffs did not have sufficient identifying information to name  
13 Defendant in the Complaint, but were able to identify Defendant by the Internet Protocol address  
14 assigned to Defendant by Defendant's Internet Service Provider ("ISP") – in this case, the University  
15 of California-Berkeley. In order to determine the true name and identity of the Doe defendant,  
16 Plaintiffs filed their *Ex Parte* Application for Leave to Take Immediate Discovery on November 29,  
17 2007, requesting that the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the  
18 ISP.

19 3. The Court has not yet ruled on Plaintiffs' *Ex Parte* Application for Leave to Take  
20 Immediate Discovery. However, Plaintiffs have since been contacted by an attorney acting on  
21 behalf of the Doe defendant (who apparently was notified of this action by the ISP as a result of pre-  
22 litigation notices that Plaintiffs send to ISPs). Because the Doe defendant has come forward and  
23 identified herself to Plaintiffs, the relief sought in Plaintiffs' *Ex Parte* Application for Leave to Take  
24 Immediate Discovery is no longer needed. Accordingly, along with this Application, Plaintiffs have  
25 filed a Notice of Withdrawal of their *Ex Parte* Application for Leave to Take Immediate Discovery.

26 4. Settlement negotiations are ongoing. If the parties reach a settlement, Plaintiffs will  
27 promptly file appropriate dispositional documents. If negotiations fail, Plaintiffs intend to file a First  
28 Amended Complaint naming Defendant personally, and then proceed to serve process upon her.

1           5.       Given the circumstances of this case, Plaintiffs respectfully request an additional 90  
2 days – until June 26, 2008 – to effectuate service. Plaintiffs further request that the case  
3 management conference be continued to July 25, 2008, or such other date as conveniences the Court.

4           6.       Plaintiffs submit that their current efforts to settle the case without naming Defendant  
5 personally in the lawsuit constitute good cause under Rule 4(m) for an extension of time for service.  
6 *See Matasareanu v. Williams*, 183 F.R.D. 242, 245-46 (C.D. Cal. 1998) (stating good cause standard  
7 for service extensions). This Court has discretion to enlarge the time to serve even where there is no  
8 good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996). Here, Plaintiffs have  
9 acted in good faith to try to settle this matter with Defendant without potentially damaging her credit  
10 by naming her in the suit as well as attempting to avoid the cost of further litigation for both parties.  
11 Moreover, unlike a traditional case in which the defendant is known by name at the time of filing  
12 and efforts to serve can begin immediately after filing the complaint, in this case Plaintiffs first had  
13 to determine the true identity of the Doe defendant.

14           7.       Because the copyright infringements here occurred in 2007, the three-year limitations  
15 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no  
16 prejudice to the Defendant from any delay in serving the Complaint.

17           8.       Plaintiffs will provide the Defendant with a copy of this request and any Order  
18 concerning this request when service of process occurs.

19 Dated: March 17, 2008

HOLME ROBERTS & OWEN LLP

20  
21 By: /s/ Matthew Franklin Jaksa  
22 MATTHEW FRANKLIN JAKSA  
23 Attorney for Plaintiffs  
24 UMG RECORDINGS, INC.; ARISTA  
25 RECORDS LLC; ELEKTRA  
26 ENTERTAINMENT GROUP INC.;  
27 CAPITOL RECORDS, INC.; LAFACE  
28 RECORDS LLC; SONY BMG MUSIC  
ENTERTAINMENT; and MOTOWN  
RECORD COMPANY, L.P.

**[] ORDER**

Good cause having been shown:

**IT IS ORDERED**, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), that Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to June 26, 2008.

**IT IS FURTHER ORDERED** that the case management conference currently set for March 28, 2008, at 10:30 a.m. be continued to July 25, 2008 before the undersigned.

Dated: 3/19/08

By: Ronald M. Whyte  
Honorable Ronald M. Whyte  
United States District Judge